

1 KUHS & PARKER
2 ATTORNEYS AT LAW
3 P. O. Box 2205
4 BAKERSFIELD, CALIFORNIA 93303
5 (661) 322-4004 • FAX (661) 322-2906

6 Robert G. Kuhs, SBN 160291

7 Attorneys for GRANITE CONSTRUCTION COMPANY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 ANTELOPE VALLEY GROUNDWATER
11 CASES

12 Included Actions:

13 Los Angeles County Waterworks District No.
14 40 v. Diamond Farming Co., Superior Court
15 of California, County of Los Angeles, Case
16 No. BC 325201;

17 Los Angeles County Waterworks District No.
18 40 v. Diamond Farming Co., Superior Court
19 of California, County of Kern, Case No. S-
20 1500-CV-254-348;

21 Wm. Bolthouse Farms, Inc. v. City of
22 Lancaster, Diamond Farming Co. v.
23 Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
County of Riverside, Case No. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053

Assigned to Hon. Jack Komar

ANSWER OF GRANITE
CONSTRUCTION COMPANY TO
COMPLAINT AND ALL CROSS-
COMPLAINTS

24 GRANITE CONSTRUCTION COMPANY ("Granite") named as ROE 1141 hereby
25 answers the complaint of Los Angeles County Waterworks District No. 40 ("Complaint") and all
26 Cross-Complaints that have been filed as of this date, specifically those of the Public Water
27 Suppliers, Antelope Valley East-Kern Water Agency, Palmdale Water District, Quartz Hill
28

1 Water District, Rosamond Community Services District, Phelan Pinion Hills CSD and all cross-
2 complaints hereinafter filed against Granite ("Cross-Complaints").

3 **GENERAL DENIAL**

4 1. Pursuant to Code of Civil Procedure section 431.30(d), Granite hereby generally
5 denies each and every allegation set forth in the Complaint and Cross-Complaints, and the whole
6 thereof, and further denies that Complainant and Cross-Complainants are entitled to any relief.
7

8 **AFFIRMATIVE DEFENSES**

9 **First Affirmative Defense**

10 (Failure to State a Cause of Action)

11 2. The Complaint and Cross-Complaints and every purported cause of action alleged
12 therein fails to allege facts sufficient to constitute a cause of action against Granite.
13

14 **Second Affirmative Defense**

15 (Statute of Limitation)

16 3. Each and every purported cause of action contained in the Complaint and Cross-
17 Complaints is barred, in whole or in part, by the applicable statutes of limitation, including, but
18 not limited to, sections 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.
19

20 **Third Affirmative Defense**

21 (Laches)

22 4. The Complaint and Cross-Complaints, and each and every cause of action alleged
23 therein, is barred by the doctrine of laches.

24 **Fourth Affirmative Defense**

25 (Estoppel)

26 5. The Complaint and Cross-Complaints, and each and every cause of action alleged
27 therein, is barred by the doctrine of estoppel.
28

Fifth Affirmative Defense

(Waiver)

6. The Complaint and Cross-Complaints, and each and every cause of action alleged therein, is barred by the doctrine of waiver.

Sixth Affirmative Defense

(Self-Help)

7. Granite has, by virtue of the doctrine of self-help, preserved its paramount overlying right to extract groundwater by continuing, during all times relevant thereto, to extract groundwater and put it to reasonable and beneficial use.

Seventh Affirmative Defense

(California Constitution Article 10, Section 2)

8. The Complainant and Cross-Complainants' methods of water use and storage are unreasonable and wasteful in the arid conditions of the Antelope Valley and thereby violate Article 10, Section 2 of the California Constitution.

Eighth Affirmative Defense

(Adequate Legal Remedy)

9. The Complainant and Cross-Complainants are barred from seeking equitable relief because they have an adequate remedy at law.

Ninth Affirmative Defense

(Ultra Vires Conduct)

10. The prescriptive claims asserted in the Complaint and Cross-Complaints are *ultra vires* and exceed the statutory authority by which each entity may acquire property as set forth in Water Code sections 22456, 31040 and 55370.

Tenth Affirmative Defense

(Cal. Constitution, Art 1, Section 19)

11. The prescriptive claims asserted by the Complainant and Cross-Complainants are barred by the provisions of Article 1 Section 19 of the California Constitution.

Eleventh Affirmative Defense

(U.S. Constitution, 5th Amendment)

12. The prescriptive claims asserted by the Complainant and Cross-Complainants are barred by the provisions of the 5th Amendment to the United States Constitution as applied to the states under the 14th Amendment of the United States Constitution.

Twelfth Affirmative Defense

(Due Process)

13. The prescriptive claims asserted by the Complainant and Cross-Complainants are barred for failure to take affirmative steps that were reasonably calculated and intended to inform each overlying landowner of Complainant and Cross-Complainants' adverse and hostile claims as required by the due process clause of the 5th and 14th Amendments of the United States Constitution.

Thirteenth Affirmative Defense

(Cal. Constitution Art 1, Section 7)

14. The prescriptive claims asserted by the Complainant and Cross-Complainants are barred by the provisions of Article 1 Section 7 of the California Constitution.

Fourteenth Affirmative Defense

(U.S. Constitution, 14th Amendment)

15. The prescriptive claims asserted by the Complainant and Cross-Complainants are barred by the provisions of the 14th Amendment to the United States Constitution.

Fifteenth Affirmative Defense

(Consent)

16. The Complainant and Cross-Complainants were permissively pumping at all times.

Sixteenth Affirmative Defense

(Cal. Constitution, Article 3, Section 3)

17. The request for the court to use its injunctive powers to impose a physical solution seeks a remedy that is in violation of the doctrine of separation of powers set forth in Article 3 section 3 of the California Constitution.

Seventeenth Affirmative Defense

(Cal. Civil Code)

18. The Complainant and each Cross-Complainant is barred from asserting their prescriptive claims by operation of law as set forth in Civil Code section 1007, 1009 and 1214.

Eighteenth Affirmative Defense

(Unclean Hands/Unjust Enrichment)

19. The Complainant and each Cross-Complainant is barred from recovery under each and every cause of action alleged in the Complaint and Cross-Complaints by the doctrine of unclean hands and/or unjust enrichment.

Nineteenth Affirmative Defense

(Failure to Join Indispensible Parties)

20. The Complaint and each Cross-Complaint is defective because it fails to join indispensable and necessary parties in violation of Code of Civil Procedure Section 389.

Twentieth Affirmative Defense

(Failure to Pay Compensation)

21. The Complainant and each Cross-Complainant is barred from taking, damaging, possessing or using Granite's property without first paying just compensation.

Twenty-First Affirmative Defense

(Pub.Res.Code Section 2100 *et seq*)

22. The Complainant and each Cross-Complainant is seeking to transfer water right priorities and water usage which will have significant effects on the Antelope Valley Groundwater basin and the Antelope Valley. Said actions are being done without complying with and contrary to the provisions of California's Environmental Quality Act (CEQA). (Pub.Res.Code, section. 2100 *et seq.*).

Twenty-Second Affirmative Defense

(Pub.Res.Code Section 2100 *et seq*)

23. The Complainant and each Cross-Complainant seek judicial ratification of a project that has had and will have a significant effect on the Antelope Valley Groundwater Basin and the Antelope Valley that was implemented without providing notice in contravention of the provisions of CEQA. (Pub.Res.Code, section 2100 *et seq.*).

Twenty-Third Affirmative Defense

(Pub.Res.Code, Section 2100 *et seq*)

24. Any imposition by this court of a proposed physical solution that reallocates the water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the pre-project legislative requirements and protections of CEQA. (Pub.Res.Code, section 2100 *et seq.*).

Twenty-Fourth Affirmative Defense

(Water Code Section 5000 et seq.)

25. The Complaint and Cross-Complaints and each and every purported cause of action alleged therein is barred by Water Code section 5000 et seq.

Twenty-Fifth Affirmative Defense

(Additional Defenses)

26. The Complaint and Cross-Complaints do not state their allegations with sufficient clarity to enable Granite to determine what additional defenses may exist to Complainant and Cross-Complainants' causes of action. Granite therefore reserves the right to assert all other defenses which may pertain to the Complaint and Cross-Complaints.

Wherefore, Granite prays that judgment be entered as follows:

1. That Complainant and each and every Cross-Complainant take nothing by reason of its Complaint or Cross-Complaint;
2. That the Complaint and Cross-Complaint be dismissed with prejudice;
3. For a judicial determination that Granite's right to pump water from the basin is superior and paramount to the right of Complainant and each Cross-Complainant, if any;
4. That if the Court determines that the Complainant or any Cross-complainant is entitled to any relief, that Granite be awarded just compensation for any property interest taken or damaged thereby.
5. For attorney's fees as provided by law;
6. For costs incurred herein; and

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7. For such other and further relief as the Court deems just and proper.

Dated: February 28, 2012

KUHS & PARKER

By



Robert G. Kuhs, Attorneys for Granite

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PROOF OF SERVICE

I, Valerie Hanners, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On February 28, 2012, I caused the foregoing document(s) described as **ANSWER OF GRANITE CONSTRUCTION COMPANY TO COMPLAINT AND ALL CROSS-COMPLAINTS** to be served on the parties in this action, as follows:

- (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefilings.org regarding the Antelope Valley Groundwater matter.
- () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in seal envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Bakersfield, California, addressed to:
- () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- () (BY FACSIMILE TRANSMISSION) I am "readily familiar" with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on February 28, 2012 in Bakersfield, California.
- () (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Valerie Hanners